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ABSTRACT

The passage of education legislation extending equal rights to women precipitated a series of court cases testing the rights of women to participate in high school athletic programs. These court decisions have resulted in fundamental changes in the operation, organization, and administration of athletic programs within many school districts. A history of major court decisions concerning sex discrimination in high school athletics is given. Arguments, both pro and con, used in court cases involving mixed competition are discussed in the summary. (JN)

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A HISTORY OF SEX DISCRIMINATION IN HIGH SCHOOL ATHLETICS - SCHOOL LAW AND ATHLETIC ADMINISTRATION

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Introduction - The Role of the Administrator

It is not uncommon for a teacher or administrator to be taken to court in this day and age. Consequently, it is a necessity for the administrator to know what is legal under the law. He or she should read the legal cases as they are decided in order to stay updated. The material for this paper deals with a history of court cases pertinent to sex discrimination in high school athletics. The responsibility of comprehending and implementing these cases lies with administrators dealing with each athletic program.

Sex Discrimination - A General Overview

"We ain't what we oughta be,
We ain't what we wanta be,
We ain't what we gonna be,
But thank God we ain't what we was."[1]

The words quoted above belong to Dr. Martin Luther King Jr. They were referring to the battle of our black people for equality. These words could also be used to refer to the women of this country. "Both classifications create large, natural classes, membership in which is beyond the individual's control, and both have highly visible characteristics from which one can easily draw gross, stereotypical distinctions."[2] Indeed, women have been discriminated against in all walks of life be it education, employment, athletics or what ever.

During the years, however, things have happened that have changed many of these discriminatory practices. First and foremost among these changes was the change in the attitude of women themselves. They have confidence in their abilities, and they are demanding to be treated equal, by pursuing their own interests and careers.

Legal enactments have also had an effect on these discriminatory practices. The Civil Rights Act of 1964 and the Educational Amendments of 1972 are two examples of such enactments. The Civil Rights Act states: "It shall be an unlawful employment practice for an employer. . .to limit, segregate, or classify his employees in any way which would deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, religion, sex, or national origin."[3]

Title IX of the Education Amendment of 1972 approved by Congress on June 23, 1972 reads as follows: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . ."[4]

Legal interpretations of already existing laws have also affected the status of women, in particular the due process section of Amendment Fourteen of the Federal Constitution of the United States. Amendment Fourteen is known as the "Equal Rights" Amendment.[5] Originally passed to protect the rights of former Black slaves freed by the Civil War, it is now frequently used by plaintiffs in sex discrimination cases.

Impact of the Courts

The Federal and State judiciary has been quite active in regard to matters concerning interscholastic athletics. Decisions of the courts have resulted in fundamental changes in the operation, organization, and administration of athletic programs within many school districts. The decisions have been both praised and damned. Supporters of the Federal judiciary tend to stress two points. First, that the court decisions merely protect the rights of individuals,

which are clearly guaranteed by the U.S. Constitution. Secondly, the role of the court is to interpret the law according to each individual case and to reach a decision on this basis. The remainder of this paper will describe major decisions of the courts relevant to sex discrimination in high school athletics.

A History of Major Court Decisions Relevant to Sex Discrimination in High School Athletics

The opinions of women in athletics, like the opinion of women in general, has changed drastically during the past decade. "No longer do the cheerleaders cheer, while the players play."[6] As Martha Moffett has stated: "The days of male domination of sports are over. Women are commanding equal respect."[7]

This respect has come, in a large part, through legal action in the courts. Not until the seventies did the courts question the separation of sexes in athletic programs, nor did they question the types of programs that were offered. Since 1972, however, the courts' opinion has been changing. The court cases in 1975 and 1976 viewed totally separate programs as being discriminatory. They have also demanded that equal monies be spent on programs for the two sexes. The remainder of this section will deal with cases that have been heard by the courts. It is not uncommon for one court to reach a decision completely opposite than that of another court. Certain similarities can be ascertained in the cases presented. These major court decisions were picked as a representative sampling of the issue of sex discrimination in athletics.

Magill v. Avonworth Baseball Conference. United States District Court of Pennsylvania, August 1973. Ten year old Pamela Magill, denied the right to play baseball by the Avonworth Baseball Conference, brought action against the Conference for sex discrimination. The court ruled that although the Conference

is licensed by the state, this does not necessarily make it state controlled. Because the Conference was not supported in any way by the state, it did not fall under the Civil Rights Laws of the state. The court also felt that there was a good reason for not allowing girls to compete in a contact sport; girls are not physically equal to boys, and therefore would have more injuries. District Judge McCune expressed his feelings as: "Baseball is a contact sport. There is no question that a runner who tries to beat a throw to the plate is frequently blocked by the catcher. This contact is severe if not violent." (Judgement was for the defendent).[8]

Bucha v. Illinois High School Association. U.S. District Court of Illinois, November 1972. Sandra Bucha filed action against the Illinois High School Association claiming that limitations on girl's athletic contests not found on boy's athletic contests, were discriminatory. The court ruled that the Association was controlled by the laws of the state because it was funded by schools under state control, and it used state facilities. After reviewing Olympic records and expert testimony, the court decided that there are valid reasons for special limitations on girl's athletics (physical build, work load capacity, heart rate, emotional development). The court also mentioned that: "Unrestricted athletic competition between the sexes would lead to male domination of interscholastic sports, and would actually result in a decrease in female participation in such events." (Judgement was for the defendent).[9]

Brendin v. Independent School District. U.S. District Court of Minnesota, May 1972. Peggy Brendin and Tony St. Pierre, two high school girls, were prohibited from trying out for the boy's tennis and cross country teams. No separate teams were available for girls. Both girls had good backgrounds in these sports - both had competed in these sports with other

non-school organizations. The court turned down the defendent school district's protest that improper grievance procedures had been used. District Judge Lord explained that: "The procedures for challenging state action under that provision is a remedy which is separate from and supplemental to any state administrative remedies." The argument of financial burden was dismissed, as was the argument that the athletic programs would be ruined. The court did note, however, that: "There are of course substantial physiological differences between males and females. As testified to by the defendent's expert witnesses, males are taller than females, stronger than females by reason of greater muscle mass, have larger hearts than females and a deeper breathing capacity enabling them to utilize oxygen more efficiently than females, run faster based on the construction of the pelvic area, which when females reach puberty widens, causing the femur to bend outward, rendering the female incapable of running as efficiently as the male. These physiological differences may, on the average, prevent the great majority of females from competing on the level of equality with the great majority of males." (Judgement was for the plaintiff).[10]

Reed v. Nebraska School Activities Association. U.S. District Court of Nebraska, April 1972. Debbie Reed, prohibited from trying out for the boy's golf team, filed suit against the Activities Association. Defendent's arguments based on added cost and failure to use proper grievance procedures were disallowed. The defense, charged with the duty to show reason for this discrimination, did not adequately do so. Based on merit, Miss Reed is more than worthy to compete for a position on the team. Circuit Judge Urbom, responding to the claim of the defense that participation in athletics is not a fight but a privilege stated: "The issue at hand is not whether Debbie Reed has a right to play golf, the issue is whether she can be treated differently from boys in an activity provided by the state. Her right is not to play golf. Her right

is the right to be treated the same as boys unless there is a rational basis for her being treated otherwise." (Judgement for the plaintiff).[11]

National Organization for Women v. Little League Baseball Incorporated. Superior Court of New Jersey, March 1974. The contention that girls are physically and psychologically inferior to boys was dismissed by the court. The court did not feel that the female athlete stood a greater chance of injury either physically or psychologically. The court also held that Little League Baseball Incorporated was a place of public accommodation and was therefore subject to the rules of the state regarding public places and sex discrimination. (Judgement for the plaintiff).[12]

Haas v. South Bend Community School Corporation (1972). The court ruled that: "to bar girls from competing on varsity athletic teams in interscholastic teams was, in effect, prohibiting females from participating in interscholastic athletics completely. The court stated that while differences in athletic ability might constitute a justifiable reason for the separation of male and female athletic programs, such a justification did not exist when only one athletic program was provided noting that the stated purpose of establishing interscholastic athletics was to provide students with the opportunity to cultivate good habits and to develop mental and physical abilities, the court expressed the view that such opportunities were equally beneficial to both male and female students. As a justification for the rule, the association argued that the exclusionary rule was necessary in order to protect girls' athletic programs. The association maintained that if girls were permitted to try out for the boys' teams, then boys must similarly be permitted to try out for girls' teams, and recognizing the generally superior level of athletic ability possessed by males, the association contends that both teams - girls' and boys' would ultimately be composed entirely of males, thus eliminating females from interscholastic competition altogether." (Judgement for the plaintiff).[13]

Morris v. Michigan State Board of Education. U.S. Court of Appeals, January 1973. Miss Morris sought an injunction against the rule set up by the State Board of Education that prohibited girls from competing with boys in non-contact sports. The lower court granted the injunction for all sports not only those of a non-contact nature. The higher court upheld the decision of the lower court, but ordered the lower court to grant the injunction only for non-contact sports since the case was originally brought to the court in this form. (Judgement for the plaintiff.)[14]

Ritacco v. Norwin School District. District Court of Pennsylvania, May 1973. The plaintiff charged that she had been denied her constitutional rights because of a regulation of the Pennsylvania Interscholastic Athletic Association which required separate girls' and boys' teams for interscholastic non-contact sports. The court held that this regulation did not violate her constitutional rights. It was also pointed out by the court that, subsequent to the rule's implementation, there was a virtual mushrooming of girls' interscholastic sports teams. Further, the court stated: "While recognizing that the maintenance of separate sports teams suggested the possibility of a denial of equal protection, the court nevertheless concluded that separate but equal was justifiable in the realm of sports competition because there existed a rational basis for the sex-based classification. That is, a valid attempt to enhance the quality, quantity, and caliber of interscholastic sports opportunities for girls which had been dominated by males prior to the adoption of the rule. The court stated that the rule had an additional rational basis in that the physiological and psychological differences existing between males and females effectively prevented the great majority of women from competing on an equal level with the great majority of males. The court thus concluded that where the opportunities for engaging in sports activities was equal, as in the case at hand, the rule requiring separate teams based on sex fostered greater

participation in sports." (Judgement for the defendent).[15]

Commonwealth of Pennsylvania by Israel Packel v. Pennsylvania Interscholastic Athletic Association. Pennsylvania Supreme Court, March, 1975. The Commonwealth on behalf of Packel, charged that the PIAA by-law prohibiting girls from competing or practicing with boys in any athletic contest was unconstitutional. The court agreed, saying that this was discrimination by sex, and that the PIAA had not shown that there was just reason for such discrimination. Argument for separate but equal teams was also dismissed. The court then went beyond the original request for an injunction in non-contact sports, and granted an injunction for all sports including those of a contact variety. (Judgement for the plaintiff).[16]

Summary

The arguments, pros and cons, used in court cases involving sex discrimination will be summarized in two lists.

Arguments against mixed athletic competition:

1. The resulting increased cost will be a burden on school districts.
2. Physical and psychological differences between the male and female make the female athlete more vulnerable to injury when mixing occurs.
3. Improper grievance procedures have been used by the plaintiff in bringing this case to court.
4. If girls are allowed to be on boys' teams, then boys must be allowed on girls' teams, ruining girls' sports.
5. State athletic associations are private organizations, and do not become subject to the laws of the state regarding sex discrimination.
6. It is a privilege and not a right of an individual to participate in high school athletics.

Arguments supporting mixed competition:

1. Cost should not be the determining factor as to who participates in high school athletics.

2. Experts can not agree that there are physiological and psychological differences that would effect athletic competition.

3. The right to be heard in court is independent of any by-laws set up by a private organization.

4. Because athletic associations are supported by state institutions, and because they utilize state facilities, they are subject to the laws of the state.

The high school administrator of the seventies found themselves dealing with the problem of sex discrimination in athletics. Their role was complicated with the introduction of guidelines to Congress extending women equal rights protection. The courts attempted to uphold the rights of individuals in each case. Decisions were reached according to the specific situation and the circumstances involved. As the past indicates, administrators must stay updated with current happenings in high school athletics. Their responsibility, as decided by the courts, is to implement, revise and organize the athletic programs in their jurisdiction while complying with the law.

FOOTNOTES

[1]DeCrow, Karen. Sexist Justice. New York: Random House, 1974, pp. 303.

[2]"Developments In the Law-Employment Discrimination," Harvard Law Review. Vol. 84, St. Paul: West Publishing Co. March 1971, pp. 1506.

[3]Alexander, Kern, Ray Corns and Walter McCann. Public School Law. St. Paul: West Publishing Co. 1973, pp. 223.

[4]Kanowicz, Leo. Sex Roles in Law and Society. Albuquerque: University of New Mexico Press, 1973, pp. 584.

[5]Stimpson, Catherine, ed. Women and the "Equal Rights" Amendment. New York: R. R. Bowker Company, 1972, pp. 1-538.

[6]DeCrow, Karen. Sexist Justice. New York: Random House, 1974, pp. 303.

[7]Moffett, Martha. Great Women Athletes. New York: Platt and Munk Publishers, 1974, pp. 8.

[8]See Magill v. Avonworth Baseball Conference. (1973). 364 Federal Supplement 1212-1217.

[9]See Bucha v. Illinois High School Association. (1972). 351 Federal Supplement 69-75.

[10]See Brendin v. Independent School District. (1972). 342 Federal Supplement 1224-1234.

[11]See Reed v. Nebraska School Activities Association. (1972). 341 Federal Supplement 258-264.

[12]See National Organization for Women v. Little League Baseball, Inc. (1974). 318 A2d 34-43.

[13]Avery, Jane. "Validity Under Federal Law of Sex Discrimination in Athletics" American Law Reports, Vol. 123. Rochester: The Lawyers Co-Operative Publishing Co. 1975, pp. 664-683.

[14]See Morris v. Michigan State Board of Education. (1973). 472 Federal Supplement 1207-1209.

[15]See Ritacco v. Norwin School District. (1973). 361 Federal Supplement 930-936.

[16]See Commonwealth of Pennsylvania v. Pennsylvania Interscholastic Athletic Association. (1975). 336 A2d 839-843.

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